

### § 1204.13

### 5 CFR Ch. II (1–1–04 Edition)

public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(3) The requester must establish eligibility for a waiver of fees or for reduced fees. The denial of a request for waiver of fees may be appealed under subpart C of this part.

#### § 1204.13 Denials

(a) The Board may deny: A request for reduced fees or waiver of fees; a request for a record, either in whole or in part; a request for expeditious processing based on the requester's compelling need; or a request that records be released in a specific electronic format. The denial will be in writing, will state the reasons, and will notify the requester of the right to appeal.

(b) If the Board applies one or more of the exemptions provided under the FOIA to deny access to some or all of the information requested, it will respond in writing, identifying for the requester the specific exemption(s), providing an explanation as to why the exemption(s) to withhold the requested information must be applied, and providing an estimate of the amount of material that has been denied to the requester, unless providing such an estimate would harm an interest protected by the exemptions.

(c) The amount of information deleted will be indicated on the released portion of the record at the place in the record where the deletion is made, if technically feasible and unless the indication would harm an interest protected by the exemption under which the deletion is made.

#### § 1204.14 Requests for access to confidential commercial information.

(a) *General.* Confidential commercial information provided to the Board by a business submitter will not be disclosed in response to a FOIA request except as required by this section.

(b) *Definitions.* (1) The term *confidential commercial information* means records provided to the government by a submitter that are believed to contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be

expected to cause substantial competitive harm.

(2) The term *submitter* means any person or organization that provides confidential commercial information to the government. The term *submitter* includes, but is not limited to, corporations, state governments, and foreign governments.

(c) *Notice to business submitters.* The Board will provide a business submitter with prompt written notice of a request for its confidential commercial information whenever such written notice is required under paragraph (d) of this section. Exceptions to such written notice are at paragraph (h) of this section. This written notice will either describe the exact nature of the confidential information requested or provide copies of the records or parts of records containing the commercial information.

(d) *When initial notice is required.* (1) With respect to confidential commercial information received by the Board before January 1, 1988, the Board will give the business submitter notice of a request whenever:

(i) The information is less than 10 years old; or

(ii) The Board has reason to believe that releasing the information could reasonably be expected to cause substantial competitive harm.

(2) With respect to confidential commercial information received by the Board on or after January 1, 1988, the Board will give notice to the business submitter whenever:

(i) The business submitter has designated the information in good faith as commercially or financially sensitive information; or

(ii) The Board has reason to believe that releasing the information could reasonably be expected to cause substantial competitive harm.

(3) Notice of a request for commercially confidential information that was received by January 1, 1988, is required for a period of not more than 10 years after the date on which the information is submitted unless the business submitter requests, and provides justification for, a longer specific notice period. Whenever possible, the submitter's claim of confidentiality must